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A-70737
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UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

TESSEMA D. SHIFFERAW

Serial No. 09/909,953

Filed: July 19, 2001

For: MACHINE FOR DOING SQUATS
AND OTHER EXERCISES

Examiner: Glenn E. Richman

Group Art Unit: 3764

October 6, 2004

BRIEF ON APPEAL

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REAL PARTY IN INTEREST

The real party in interest is the inventor and applicant, Tessema Dosho Shifferaw..

RELATED APPEALS AND INTERFERENCES

None.

STATUS OF CLAIMS

The application was originally filed with Claims 1 - 12, and Claim 13 was added by an Amendment filed May 27, 2003, and Claims 1, 8 and 10 were amended in an Amendment filed January 23, 2004. Claims 1 - 13 are on appeal.

STATUS OF AMENDMENTS

No amendments have been filed since the action from which the appeal is taken.

RELATED APPLICATIONS/PATENTS

None.

SUMMARY OF INVENTION

The invention is a machine for doing squats and other exercises. As illustrated in Figures 1 and 2 of the drawings and described at pages 1 - 3 of the specification, the machine has a platform 14, 16 for receiving an exerciser, a post 11 which extends in an upward direction from the platform, a carriage 13 which can be moved up and down the post by the exerciser, and a plurality of elastic elements 26 which can be selectively connected to the carriage to assist or resist movement of the carriage in either direction along the post. The elastic elements are connected between the carriage and a pair of cross-arms 27, 28 which are affixed to the post.

The machine is portable, with the two sections of the platform being hinged together for movement between an operational position in which both of the sections extend in a horizontal direction and a storage position in which the outer section 14 is folded up at an angle relative to the inner section 16. Wheels 31 are attached to the base to facilitate moving the machine about.

The machine can be used for doing a variety of exercises, some of which are illustrated in Figures 3 - 8.

Squats can be done as illustrated in Figures 3 - 4, with the exerciser standing on the platform and leaning back toward the post, with his back resting against backrest 22 and his hands gripping handles 23. The post is inclined at a comfortable angle which prevents stress on the back or knees, and elastic cords 26 connected between the carriage and upper cross arm 27 lift the carriage and assist the exerciser in straightening his legs as he comes up. These cords also provide resistance on the way down, which works the hamstrings and gluteus maximums.

Lunges can be done as illustrated in Figures 5 - 6, by placing one foot toward the front of the platform and one toward the rear, with the back resting against the backrest and the hands gripping the handles. The exerciser then drops down onto the

rear knee and rises again, with elastic cords 26 connected to the upper cross arm assisting the upward movement and resisting the downward movement.

To do biceps curls, the exerciser stands on the platform facing the post, with his hands gripping the handles from below, as shown in Figure 7. Cords 26 connected between the carriage and the lower cross arm resist upward movement of the exerciser's arms as they pivot about the elbows.

For triceps extensions, the exerciser kneels on the platform facing the post, with his hands gripping the handles from above, as shown in Figure 8. Cords 26 connected between the upper cross arm and the carriage resist movement of the arms in the downward direction as they pivot about the elbows.

The enables people who otherwise could not do so to do multiple repetitions of deep knee bends or squats, and it can also be used in other exercises for the arms, legs, shoulders and back. It can provide assistance as well as resistance, and the amount of assistance or resistance is readily adjusted simply by changing the number and position of the elastic cords. The machine is relatively compact, and is easily stored in a closet or under a bed when not in use.

ISSUES

Whether the Examiner has erred in rejecting Claims 1 - 9 under 35 U.S.C. §102 as being anticipated by Graham (U.S.4,706,953).

The application also contains Claims 10 - 13 which, in an earlier action, were rejected under 35 U.S.C. §103 as being unpatentable over Graham in view of Boren (U.S. 5,263,913). That rejection was not made in the final action, and applicant assumes that those claims are being found to be allowed, although the final action is silent on the point. In the event that the rejection is still being maintained, then there is also an issue as to whether the Examiner erred in making it.

GROUPING OF CLAIMS

It is not acceptable to applicant to have the two claims stand or fall together within the group in which they have been rejected. Different claims include an different limitations, and the Board could very well find that at least some of the claims are directed to patentable subject matter even if it were to affirm the Examiner's rejection of others.

ARGUMENT

Claims 1 - 9, 13

In order to be a proper basis for rejection under 35 U.S.C. §102, a reference must show each and every element of the claimed invention, which Graham clearly does not do. Initially, it should be noted that Graham is concerned with a different type of machine than applicant's invention -- one which is intended to provide cardiovascular stimulation and only passive exercise of most body components, rather than one for doing active exercises such as deep knee bends, lunges, squats or arm curls.

The device shown in Graham consists essentially of a platform which rolls on a pair of horizontally extending tracks, with bungee cords connected to both ends of the platform for sustaining an oscillating motion once the platform is set in motion. Although Graham does suggest elevating one end of the tracks to a limited degree in order to provide greater inertial forces in one direction, it does not suggest a machine having an upright post and a carriage for doing active exercises as in applicant's invention.

Claim 1 distinguishes over Graham in calling for a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, and a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage in the upward and downward directions.

Claims 2 - 7 and 13 depend from Claim 1 and are directed to patentable subject matter for the same reasons as their amended parent claim. In addition, they call for additional features which are not found in the references.

Claim 2, for example, specifies that the carriage includes a backrest for receiving the back of the exerciser on the platform, and Claim 3 further specifies that the carriage includes a handle adapted to be gripped by the exerciser. This is totally unlike Graham where the "exerciser" rests entirely upon the rolling platform, and there are no handles on it.

Claim 4 further distinguishes in specifying that the post is inclined at an angle relative to the platform, and Claim 5 further specifies that the angle between the post and the platform is adjustable.

Claim 6 calls for a plurality of rollers which mount the carriage to the post for rolling movement along the post, and Claim 7 specifies that the elastic elements are bungee cords.

Claim 13 further distinguishes in specifying that the platform is adapted to rest on a horizontally extending supporting surface, and the post is supported by the platform.

Claim 8 distinguishes over Graham in calling for a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, horizontally extending arms affixed to the post above and below the carriage, and a plurality of elastic elements which can be selectively connected between the carriage and the arms to assist or resist movement of the carriage in the upward and downward directions.

Claim 9 depends from Claim 8 and is directed to patentable subject matter for the same reasons as its parent claim. In addition, it specifies that the elastic elements are bungee cords..

Claims 10 - 12

Claim 10 distinguishes over Graham and Boren in calling for a base including a platform formed in two sections which are hinged together for movement between an

operational position in which both of the sections extend in a horizontal direction and a storage position in which one of the sections is folded at an angle relative to the other, a post mounted on the platform and extending in an upright direction when the machine is in use and the platform sections extend horizontally, a carriage which can be moved along the post in upward and downward directions by an exerciser, a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage along the post, and wheels attached to the base for use in moving the machine about. Taken individually or collectively, Graham and Boren do not disclose a machine having these elements, and as discussed in response, their teachings cannot be combined without rendering the Boren machine unfit for its intended use.¹

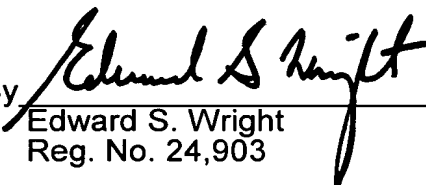
Claims 11 and 12 depend from Claim 10 and are directed to patentable subject matter for the same reasons as their amended parent claim. In addition, they call for additional elements which are not found in the references.

In that regard, Claim 11 specifies that the post is hingedly connected to one of the platform sections, and a brace is connected between the post and the base for holding the post at different angles relative to that platform section, and Claim 12 specifies that the elastic elements are bungee cords

SUMMARY AND CONCLUSION

It is respectfully submitted that the rejection(s) which the Examiner has made cannot be sustained and that the action of the Examiner should be reversed.

Respectfully submitted,

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¹ Adding elastic elements or other resistance elements to the machine of Boren, as suggested by the Examiner, would be contrary to the express teaching of the reference itself, and therefore is not a proper basis for rejection under 35 U.S.C. §103. In that regard, it will be noted that Boren specifically cautions against the use of weights or other resistance for doing squats and recognizes the inability of some people's legs to sustain the full weight of the upper body in doing such exercises. See Col. 1, lines 50 - 52, et seq. Boren's solution is to decrease the vertical load due to the upper body weight by, in effect, positioning the person doing squats on an inclined ramp so that the upper body weight does have to be lifted as far vertically as the legs are bent and straightened. Increasing the load with elastic elements would defeat the purpose of Boren's machine.

In addition to being contrary to the teachings of Boren itself, the use of elastic elements in a machine like Boren's is not suggested by Graham or the other references cited by the Examiner. The only motivation for that combination is found in applicant's own disclosure and claims, and it appears that the Examiner has engaged in impermissible hindsight reconstruction in using them as a blueprint for picking and choosing different elements from different references in order to produce the invention.

The Claims on Appeal

1. An exercise machine comprising: a horizontally extending platform for receiving an exerciser, an upright post mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, and a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage in the upward and downward directions.

2. The exercise machine of Claim 1 wherein the carriage includes a backrest for receiving the back of the exerciser on the platform.

3. The exercise machine of Claim 1 wherein the carriage includes a handle adapted to be gripped by the exerciser.

4. The exercise machine of Claim 1 wherein the post is inclined at an angle relative to the platform.

5. The exercise machine of Claim 4 wherein the angle between the post and the platform is adjustable.

6. The exercise machine of Claim 1 including a plurality of rollers which mount the carriage to the post for rolling movement along the post.

7. The exercise machine of Claim 1 wherein the elastic elements are bungee cords.

8. An exercise machine comprising: a horizontally extending platform for receiving an exerciser, an upright post extending upwardly from mounted on the platform, a carriage which can be moved along the post in upward and downward directions by the exerciser, horizontally extending arms affixed to the post above and below the carriage, and a plurality of elastic elements which can be selectively connected between the carriage and the arms to assist or resist movement of the carriage in the upward and downward directions.

9. The exercise machine of Claim 8 wherein the elastic elements are bungee cords.

10. An exercise machine comprising: a base including a platform formed in two sections which are hinged together for movement between an operational position in which both of the sections extend in a horizontal direction and a storage position in which one of the sections is folded at an angle relative to the other, a post mounted on the platform and extending in an upright direction when the machine is in use and the platform sections extend horizontally, a carriage which can be moved along the post in upward and downward directions by an exerciser, a plurality of elastic elements which can be selectively connected to the carriage to assist or resist movement of the carriage along the post, and wheels attached to the base for use in moving the machine about.

11. The exercise machine of Claim 10 wherein the post is hingedly connected to one of the platform sections, and a brace is connected between the post and the base for holding the post at different angles relative to that platform section.

12. The exercise machine of Claim 10 wherein the elastic elements are bungee cords.

13. The exercise machine of Claim 1 wherein the platform is adapted to rest on a horizontally extending supporting surface, and the post is supported by the platform.

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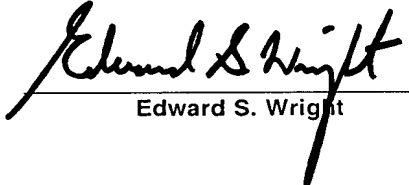
Examiner: Glenn E. Richman

Art Unit: 3764

Confirmation No. 2460

CERTIFICATE OF MAILING

I hereby certify that this correspondence, the attached Brief on Appeal (in triplicate) and check in the amount of \$170.00 are being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Mail Stop Appeal Briefs - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on October 6, 2004.


Edward S. Wright

TRANSMITTAL OF APPEAL BRIEF

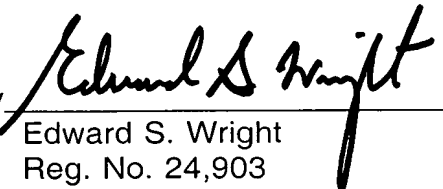
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Sir:

Transmitted herewith (in triplicate) is applicant's Brief on Appeal in this matter.

A check in the amount of \$170.00 is enclosed for payment of the Brief on Appeal. The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 50-2975, Order No. A-70737.

Respectfully submitted,

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